IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3790 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIDSA INORGANICS PVT. LTD

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:

MR MIHIR H JOSHI for Petitioner

MR HARESH J TRIVEDI for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 03/05/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. H.J.Trivedi, learned Counsel waives service of notice of rule on behalf of the respondent.

Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the petition is taken-up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction restraining the respondent from rejecting the petitioner's application dated March 14, 2000 for consent submitted under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 ("the Water Act" for short). The petitioner has further prayed to issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondent to process, consider and grant the application dated March 14, 2000 submitted for obtaining consent under the Water Act. The petitioner has also prayed to quash and set aside direction dated February 8, 2000 issued under section 33-A of the Water Act by which the petitioner is prohibited from manufacturing Sodium Silico Fluoride and directed to close operation of industrial plant till consent of Gujarat Pollution Control Board is obtained and adequate treatment plant is installed and efficiently operated.

3. The petitioner is a Private Limited Company registered and incorporated under the provisions of the Companies Act, 1956. It is, inter-alia, engaged in the business of manufacturing Sodium Silico Fluoride at its factory situated at Ankleshwar. The petitioner was granted Site Clearance Certificate on January 30, 1999, a copy of which is produced at Annexure-A to the petition. As provided in the said certificate, the petitioner applied on March 10, 1999 for 'no objection certificate' in order to enable the petitioner to commence commercial production. In view of the application for no objection certificate, officers of the respondent carried out inspection of the Plant as well as effluent treatment equipment installed by the petitioner. The drainage connection was also granted to the petitioner by the Gujarat Industrial Development Corporation for carrying its effluent. The respondent, after finding everything in order, granted 'no objection certificate' on April 29, 1999 and pursuant to the said certificate, the petitioner set-up its industrial unit. In the meantime, the petitioner had also made necessary applications for obtaining consent under the Water Act as well as the Air

(Prevention and Control of Pollution) Act, 1981. On May 25, 1999, the petitioner was granted consent under the Air Act for manufacturing Sodium Silico Fluoride, but the application for consent submitted under the provisions of the Water Act was rejected. Thereafter a direction under section 33-A of the Water Act is issued on February 8, 2000 prohibiting the petitioner from manufacturing Sodium Silico Fluoride and directing the petitioner to close operation of industrial plant till consent of the Board is obtained and adequate treatment plant is installed and efficiently operated. After receipt of the above-referred to direction, the petitioner filed an application for consent under the Water Act on March 14, 2000. In the meantime, the petitioner also undertook civil construction and ancilliary activities for upgrading the existing effluent treatment plant and requested the respondent to inspect the treatment facility provided by the petitioner. Accordingly, officers of the respondent had inspected the plant on March 16, 2000. On the basis of the inspection, the petitioner applied to the respondent for commencing its manufacturing activities, pursuant to which the plant was inspected by the officers of the respondent on March 30, 2000. According to the petitioner, one of the two conditions imposed in the order dated February 8, 2000 was complied with by the petitioner by installing an adequate treatment plant for its effluent and only the condition regarding obtaining consent under the Water Act remained to be fulfilled. The petitioner, therefore, made representation to the respondent for granting consent under the Water Act. Since the petitioner apprehended that its application for consent under the provisions of the Water Act would be rejected only on the ground of directions issued by the High Court on October 21, 1999 in Special Civil Application No. 4473/97,the petitioner clarified in its representation that it was not a new unit as contemplated in the said judgment and consent should be granted to the petitioner. Despite the aforesaid clarification and representation, the petitioner apprehends that the application of the petitioner would be rejected on the ground of directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473/97. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. We may mention that Amar Pigments through its partner Ajay Desai had filed Special Civil Application No. 81 of 2000 against the Gujarat Pollution Control Board claiming similar reliefs. Therein, the Division Bench comprising M.S.Shah & R.R.Tripathi had issued rule

by an order dated February 8, 2000 and given interim direction to the Gujarat Pollution Control Board to consider the application of Amar Pigments for 'no objection certificate' in accordance with law and in the light of observations made in the order. It was also directed by the Court in the said petition to consider the grant of 'no objection certificate' for trial production on such terms and conditions on which Gujarat Pollution Control Board normally grants 'no objection certificate' in similar cases. The further direction given was that the matter should be considered by the Gujarat Pollution Control Board within two weeks from the date of the order.

5. Pursuant to the interim order dated February 8, 2000 which was passed in Special Civil Application No.81/2000, case of Amar Pigments was considered by Gujarat Pollution Control Board and 'no objection certificate' was granted to it vide letter dated February 18, 2000. Under the circumstances, we are of the opinion that interest of justice would be served if the Gujarat Pollution Control Board is directed to consider the application of the petitioner for consent in accordance with law and in the light of the observations made by the High Court in the interim order dated February 8, 2000 which was passed in Special Civil Application No. 81/2000.

6. For the foregoing reasons, the petition partly succeeds. The direction dated February 8, 2000 issued under section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 prohibiting the petitioner from manufacturing Sodium Silicon Fluoride and directing it to close the operation of industrial plant till consent of the Board is obtained and adequate treatment plant is installed and efficiently operated,is hereby set aside and quashed. The respondent is directed to process and consider the application for consent submitted by the petitioner under the provisions of the Water Act uninfluenced by the directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473/97. The application submitted by the petitioner shall be processed after considering the interim directions which were given by the Division Bench of this Court in Special Civil Application No.81/2000 on February 8, 2000. Till the application is considered by the respondent on merits as mentioned above, the petitioner will be entitled to commence manufacturing activities. The application submitted by the petitioner for consent shall be considered as early as possible and preferably within four weeks from today. It is clarified that the

petitioner shall not be entitled to the benefit of the provisions of deemed grant of the application which is already submitted. Rule is made absolute to the extent indicated hereinabove only, with no order as to costs.

(J.M.Panchal,J.)

3.5.2000 (A.M.Kapadia,J.)

(patel)